IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 180 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT.SAVITABEN LAXMIKANT CHAUDHARY WD/O.LAXMIKANT B.CHAUDHARY - Appellant(s)

Versus

DILIP AMBALAL PATEL & 1 - Defendant(s)

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Appearance :

MR DEEPAK M SHAH for Appellant(s) : 1,1.2.1
NOTICE SERVED for Defendant(s) : 1,
MS MEGHA JANI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 05/09/2006

ORAL JUDGMENT

1. Original claimant has preferred this appeal to challenge the judgment and award made by the Motor Accident Claims Tribunal No. VI

[Auxiliary], Ahmedabad dated 19/12/1996 in Motor Accident Claim Petition No. 290/1991. By the said award, the Tribunal has partly allowed the petition of the appellant and has granted him compensation of Rs.6,000/= with costs and interest at the rate of 12% p a from the date of the petition till realization against his claim of Rs.15,000/=. He has, therefore, approached this Court for enhancement of the compensation.

1.1. The appellant, during the pendency of the appeal before this Court, has expired on 11th March, 1999 and his death certificate is brought on record. By filing Civil Application No. 10015 of 2006 the widow of the appellant has been brought on record of the appeal and now she prosecutes this appeal.

2. This is a case of personal injury. The vehicular accident in question took place on 25th June, 1991. On that day the deceased appellant was proceeding with his son on the scooter bearing Registration No. GCN 2585. When they reached a place near Bhuyangdev in Ahmedabad City, respondent no. 1, who at the relevant time was driving his auto rickshaw, dashed his vehicle with the scooter of the deceased – appellant which resulted into causing injuries to him on the leg. It is alleged that respondent no. 1 drove at an excessive speed and in rash and negligent manner; as a result of that, the accident occurred. The injury that was sustained by the deceased – appellant was fracture of patella bone of the left leg. He also suffered other injuries.

2.1. Since the accident took place on account of the rash and negligent driving of respondent no. 1, the deceased – appellant preferred M.A.C.P. No. 290/1991 before the Motor Accident Claim Tribunal at Ahmedabad. In the said proceedings, it was averred by the deceased – appellant that since the injuries have been caused on account of the rash and negligent driving of respondent no. 1 and the vehicle, namely auto rickshaw bearing Registration No. GRT 43

was insured with respondent no. 2, it was the liability of respondent no. 2 to pay compensation to the appellant. It was averred that on account of the injury, the applicant, who at the relevant time, was serving as Supervisor in Municipal Corporation, could not attend the duty and suffered monetary loss. In view of the same, compensation of total Rs.15,000/= was prayed for. The appellant claimed Rs.6,000/= for the fracture caused to him, Rs.3,000/= for pain, shock and suffering, Rs.4,000/= for loss of one month's salary, Rs.500/= for the expenses incurred for scooter repairing and Rs.1,500/= for special diet and medicine.

2.2. The said claim was challenged by respondent by filing written statements. Respondent no. 1 filed written statement at Exh. 10; whereas respondent no. 2 filed it at Exh. 17. The averments made in the claim petition were denied and it was contended that the accident happened only because deceased – appellant, while driving the scooter, lost his balance and, therefore, his scooter dashed against the auto rickshaw driven by respondent no. 1. Therefore, it was the entire fault of the deceased – appellant and not of respondent no. 1. It was also contended that the amount of compensation claimed by the appellant was on a higher side and claim was exaggerated one. So far respondent no. 2 is concerned, it also took the defence that there was collusion between the appellant and respondent no. 1 and, therefore, the appellant was not entitled to receive any amount from respondent no. 2.

2.3. Both the parties filed affidavits as well as documentary evidence. So far Dr. Atul G Bhatt, who treated the appellant, was concerned, he was examined in the proceedings and his testimony is at Exh. 39. Respondent no. 1 also stepped into the witness box and his evidence is at Exh. 43. The injury certificate of the appellant was produced at Exh. 48.

3. After considering the rival submissions and also after closely

scrutinizing the material on record, the Ld. Tribunal came to the conclusion that reasonable global amount that could be awarded to the appellant was Rs.5,000/= and he also came to the conclusion that Rs.1,000/= could be awarded for medicine, special diet and transportation charges as well as for scooter repairing. He, therefore, awarded total amount of Rs.6,000/= together with costs and interest as stated above. The appellant has, therefore, approached this Court.

4. Having heard the learned advocates for the parties and having gone through the record of this appeal, it clearly appears that so far the factum of accident is concerned, there is no dispute about it. It is also the findings of the Tribunal that it was respondent no. 1 who drove the vehicle at an excessive speed and in a rash and negligent manner, which resulted into accident, knocking down the scooter driven by the appellant. It is also not in dispute that on account of this accident, the deceased – appellant sustained injury in the nature of fracture of the left leg. Obviously against these findings no challenge is made by either respondent no. 1 or 2. Therefore, they have become final.

5. The next question that is to be decided by me is whether the compensation awarded by the Tribunal is adequate. It is the submission of Mr. DM Shah, learned advocate for the appellant that the award made by the Tribunal is very conservative and its upward revision is needed on several grounds. He has submitted that the reasoning adopted by the Tribunal is erroneous in asmuch as the Tribunal has not taken into consideration the claim made by the appellant under different heads. It may be stated here that the Tribunal, after considering the nature of injuries and treatment taken by the appellant, has arrived at a conclusion that Rs.5,000/= would be a reasonable global amount which could be awarded to the appellant in the facts and circumstances of the case. He has awarded Rs.1,000/= for medicine and special diet and the total amount of Rs.6,000/= together with interest at the rate of 12%

from the date of petition till realization has been awarded. The record of the case and especially the evidence of doctor clearly shows that the appellant had suffered two injuries, namely injury to left knee and abrasions on the right leg. He has also found the fracture of patella bone for which the appellant was hospitalized for 24 hours and the traction of foot work was done and the left leg was put in plaster. Evidence of the doctor shows that in his opinion, the appellant had suffered 10% disability which was of permanent nature. He has also stated that due to this disability, the appellant would suffer difficulty in sitting cross leg and he would not be able to walk for a distance and he would also not be in a position to lift weight approximately more than 2 Kgs. It is also observed that the appellant would not be in a position to work like an ordinary person. In view of the aforesaid examination-in-chief of the doctor, it appears that subsequently an application for recalling him was made and he was cross-examined. However, in the cross-examination also he has clarified the position that the 10% disability is in respect of the entire body and it is of permanent nature. In view of the same, award made by the Tribunal of Rs.5,000/= for the injury sustained by the appellant is very meagre. The appellant has claimed the amount of Rs.6,000/= under this head and it is required to be granted fully. Considering the fact that he was required to be hospitalized for 24 hours, during which leg was put in traction and plaster was applied, it is not difficult to assume that he had undergone considerable pain. Hence, under the head of pain, shock and suffering Rs.3,000/= as claimed by the appellant is required to be granted. The appellant has claimed that for about one month he was not able to resume duty. It is supported by certificate of the Corporation at Exh. 65. There is no evidence to controvert this averment of the appellant. His monthly salary at the relevant point of time was Rs.4,000/=. Therefore, so far the actual pecuniary loss is concerned, it can be safely assessed at Rs.4,000/=, which is required to be awarded. Further considering the injury and also the treatment given by the doctor for which he has given bill of Rs.750/- to the appellant as stated by him in his evidence and considering the other circumstances on

record, there is all possibility that the appellant might have incurred expenses of Rs.2,000/= towards medicine, special diet and transportation charges. The appellant has claimed a sum of Rs.1,500/= under this head, which in the facts and circumstances of the case, appears to be very reasonable and it is required to be granted in toto. Hence, this appeal is allowed. The amount of compensation is increased from Rs.6,000/= to Rs.15,000/= together with interest at the rate of 12% p a from the date of the petition till realization. The amount, if deposited, will be adjusted against the awarded amount.

Appeal is accordingly allowed. However, in the facts and circumstances of the case, no order as to costs.

R & P to be retransmitted to the trial Court forthwith.

[Akshay H Mehta, J.]

* Pansala.